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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF WASHINGTON
10 AT SPOKANE

11 PETER WAGNER and TONYE-MARIE
12 CASTANEDA,

13 Plaintiffs,

14 v.

15 UNITED STATES OF AMERICA,

16 Defendant.

CASE NO.

COMPLAINT FOR REFUND OF
INTERNAL REVENUE TAXES

DEMAND FOR JURY TRIAL

17 COMES NOW PETER WAGNER and TONYE-MARIE CASTAÑEDA
18 (“Plaintiffs”), by and through their undersigned attorneys and hereby allege as
19 follows:
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21 **GENERAL ALLEGATIONS**

22 1. This is an action for the recovery of federal income tax, erroneously,
23 illegally, or improperly assessed and collected from the Plaintiffs for the taxable year
24 2012. Subject matter jurisdiction is proper pursuant to the provisions of Title 28,
25 United States Code § 1346(a)(1) and Title 26, United States Code § 7422.
26

1 2. Plaintiff Peter Wagner is a citizen of the United States, residing in
2 Stevens County, Washington, within the Eastern District of Washington. His
3 Taxpayer Identification Number is XXX-XX-6345.

4 3. Plaintiff Tonye-Marie Castañeda is a citizen of the United States,
5 residing in Stevens County, Washington, within the Eastern District of Washington.
6 Her Taxpayer Identification Number is XXX-XX-1878.

7 4. The defendant is THE UNITED STATES OF AMERICA
8 ("Defendant").

9 5. Venue is founded upon Title 28, United States Code ("U.S.C.")
10 § 1402(a)(1).

11
12 **FACTUAL ALLEGATIONS**

13 6. Recovery is sought of federal income tax for the taxable year ending
14 December 31, 2012 in an amount totaling \$859,557 plus interest that has accrued and
15 continues to accrue according to law.

16 7. On or around October 15, 2013, Plaintiffs timely filed their federal
17 income tax return for the year 2012, electing the filing status of married filing jointly.

18 8. On Plaintiffs' Form 1040 for the 2012 tax year, Plaintiffs timely claimed
19 entitlement to a refund of \$1,364,363 because they overpaid in such amount.
20 Plaintiffs' overpayment derived in part from Form W-2 withholding credits with
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1 respect to Plaintiff Wagner's employment with his solely owned S corporation, PW
2 Enterprises, and in part from withholding credits reported on Forms W-2G and issued
3 to Plaintiff Wagner's solely owned S corporation, PW Enterprises ("PWE"). Because
4 PWE is an S corporation, the Form W-2G withholding credits are properly reportable
5 on Plaintiffs' Form 1040.
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8 9. A refund of the overpayment was requested by the taxpayer by letter on
9 December 5, 2014.
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11 10. On May 23, 2016, the IRS issued a Notice of Partial Claim
12 Disallowance, stating it was disallowing \$500,000 of Plaintiffs' claimed refund, but
13 allowing a portion of the Taxpayers' claim. It is unknown what the disallowed portion
14 of Plaintiffs' claim relates to according to the May, 2016 Notice of Partial Claim
15 Disallowance.
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17

18 11. Although the IRS' May, 2016 Notice indicates that the IRS intended to
19 disallow \$500,000, the actual amount of claim disallowance was greater as shown by
20 the Plaintiffs' IRS transcripts of account for the 2012 tax year, attached hereto as
21 Exhibit 1. Plaintiffs' transcript of account confirms that the amount of the
22 overpayment which the IRS disallowed was actually \$859,557, and they are due a
23 refund in such amount plus interest that has accrued and will continue to accrue
24 according to law.
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1 12. As grounds for recovery, Plaintiffs allege as follows:

2 13. Plaintiff Peter Wagner is the sole shareholder of an S corporation called
3
4 PW Enterprises (“PWE”).

5 14. PWE’s business involves high volume wagering with a licensed service
6
7 provider.

8 15. PWE regularly receives Forms W-2G relating to wagers it has made and
9
10 won. PWE received approximately 14,000 W-2Gs in 2012 alone with gross winnings
11 of over \$34 million.

12 16. Pursuant to federal withholding rules on gambling winnings, the licensed
13
14 service provider (the payor) of PWE’s successful wagers withholds certain portions of
15 PWE’s gambling winnings reported on Forms W-2G and pays over such amounts to
16 the United States.

17 17. PWE maintains detailed records for each wager made throughout the
18
19 course of a year, including the following: the date of the wager, the type of wager,
20 the track/race for each wager, the gross winnings for each wager, and the tax
21 withheld for each wager. PWE also maintains copies of all of the Forms W-2G
22 themselves that have been issued to PWE, which show gross winnings and federal
23 withholdings.
24
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1 18. A summary report of the records referenced in the first sentence of
2 paragraph 15 for the 2012 tax year was included along with Plaintiffs' 2012 Form
3 1040, and provided again to the IRS by letter dated December 5, 2014, along with
4 more detail regarding the PWE W-2G withholdings.
5

6 19. In 2012, PWE's withholdings from Forms W-2G issued to PWE totaled
7 \$5,399,154.
8

9 20. As an S-corporation, which is a flow-through entity, PWE does not pay
10 federal income tax; rather, all items of income, loss, deduction, or credit with respect
11 to PWE are passed through to the S-corporation's shareholders, which in this case is
12 Plaintiff Wagner.
13

14 21. Withholding credits for W-2G withholdings are one of the credits to be
15 passed through to an S-corporation's shareholder(s) and reported on the individual
16 shareholder's income tax return. This is done by issuing a Form K-1 to any
17 shareholder(s) of the S-corporation.
18

19 22. For each taxable year, including the 2012 tax year, PWE reports the
20 withholdings to Plaintiff Peter Wagner via a Form 1120-S Schedule K-1, and Plaintiff
21 Wagner reports the withholdings on his Form 1040, including in the 2012 tax year.
22

23 23. In 2012, Plaintiffs claimed the above-referenced W-2G withholdings on
24 their 2012 Form 1040.
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1 24. Plaintiff Wagner also had withholdings from his own W-2 wages. In
2 2012, his personal W-2 withholdings totaled \$839,999.94.
3

4 25. Together, these withholdings totaled \$6,239,154.

5 26. Plaintiffs also made an estimated tax payment of \$160,807 toward the
6 2012 tax year.
7

8 27. The tax shown as due on the Plaintiffs' 2012 return was \$5,035,598.

9 28. Accordingly, Plaintiffs overpaid by \$1,364,363 based upon the following
10 payments and credits: W-2G withholdings for PWE that were creditable to Plaintiff
11 Wagner; Mr. Wagner's other withholdings reported on his 2012 Form W-2; and the
12 Plaintiffs' estimated tax payments.
13
14

15 29. In the Notice of Partial Disallowance dated May 23, 2016, the IRS
16 informed Plaintiffs that \$500,000 of their Claim was disallowed but gave no reason or
17 rationale. It is unclear from the Notice what portion of the Plaintiffs' W-2
18 withholdings the IRS disagreed with (e.g. the W-2G portion, if any, versus Mr.
19 Wagner's Wage withholding portion, if any).
20
21

22 30. Based upon Plaintiffs' transcripts of account for the 2012 tax year,
23 provided at Exhibit 1, it appears that the IRS disallowed Mr. Wagner's W-2 wage
24 withholding amount totaling \$839,999. The IRS also charged interest to Mr. Wagner
25 totaling \$19,558 with respect to the 2012 tax year, which amount was paid by Mr.
26

1 Wagner as confirmed by the transcript. In sum, Mr. Wagner has now overpaid by
2 \$859,557 for the 2012 tax year based upon the IRS's disallowance of his claimed
3 refund.
4

5 31. For the reasons described in the preceding paragraphs, Plaintiffs are
6 entitled to the Form W-2G withholding credits as well as Mr. Wagner's W-2 wage
7 withholding credits.
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9 32. Because Plaintiffs are entitled to withholding credits for the 2012 tax
10 year, they overpaid their federal income taxes for the 2012 tax year. As a result,
11 Plaintiffs are entitled to a refund of \$859,557, which is the amount of Plaintiffs' claim
12 that has not been paid to Plaintiffs and by which Plaintiffs have overpaid.
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15 CLAIM I

16 33. Plaintiffs reallege and reincorporate all facts in the preceding paragraphs
17 1-31.
18

19 34. Based on the facts set forth above, Plaintiffs' refund claim was timely
20 and they are entitled to a refund of \$859,557 for the 2012 tax year pursuant to 26
21 U.S.C. § 7422, plus interest that has accrued thereon and will continue to accrue by
22 law.
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25 35. The action of the Defendant, through its agents, in refusing to pay the
26 refund referred to above, was improper, illegal and erroneous.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that judgment be entered in their favor as follows:

1. For a refund of income tax in the amount of \$859,557 for the tax year 2012, together with interest as provided by law;
2. For reasonable attorneys' fees;
3. For costs of suit herein; and
4. For such other and further relief as the Court may deem just and proper.

DATED this 1st day of March, 2018.

COLVIN & HALLETT, P.S.

/S/ 

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